

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 289 of 1993

in

SPECIAL CIVIL APPLICATION No 7927 of 1992

with

Letters Patent Appeal No.302 of 1993

with

Letters Patent Appeal No.330 of 1993

with

Special Civil Application No.7865 of 1996

(with Civil Application No.2858 of 1997)

with

Special Civil Application No.10289 of 1996

....

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R. DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.
2. To be referred to the Reporter or not?-Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

TRUPTIBEN B PATEL

Versus

DISTRICT PRIMARY EDUCATION OFFICER.

Appearance:

Letters Patent Appeal No.289 of 1993 :

MR KG SHETH for Appellant

Mr.R.C. Jani, Advocate, for respondent No.1.

Mr.U.A. Trivedi, Assistant G.P., for Respondent Nos.

2 and 3.

Letters Patent Appeal No.302 of 1993:

MR DHIRENDRA MEHTA for Appellant

Mr.U.A. Trivedi, Assistant G.P., for respondent
No.1.

NOTICE SERVED for Respondent No. 2.

Letters Patent Appeal No.330 of 1993 :

MS KUSUM M SHAH for Appellant

MR RC JANI for Respondent No. 1

Mr.D.P. Joshi, Assistant G.P., for Respondent No. 2

Special Civil Application No.7865 of 1996 :

MR DHIRENDRA MEHTA for Petitioner

Mr.D.P. Joshi, Assistant G.P., for
Respondent No. 1

MR AD OZA for Respondent No. 2

Civil Application No.2858 of 1997 in Spl.C.A.No.7865/96:

Mr.A.D.Oza, Advocate, for the Applicant.

Mr.Dhirendra Mehta, Advocate, for respondent No.1.

Mr.D.P. Joshi, Assistant G.P., for respondent No.2.

Special Civil Application No.10289 of 1996:

Mr.Dhirendra Mehta, Advocate, for the Petitioner.

Mr.U.A. Trivedi, Assistant G.P., for respondent
No.1.

Mr.B.N. Patel, Advocate, for respondent No.2.

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and

MR.JUSTICE A.R.DAVE

Date of decision: 10/03/98

C.A.V. JUDGEMENT : (Per K. Sreedharan, C.J.)

1. Issues raised in these Letters Patent Appeals and Special Civil Applications are same. Though appellants and petitioners are different in these matters, respondents are identical. So, we consider it advantageous to dispose of these matters by a common judgment. As agreed to by counsel appearing on either side, we refer to the facts of Letters Patent Appeal No.302 of 1993 because facts of these cases do not vary materially.

2. Letters Patent Appeal No.302 of 1993 arose out of a decision rendered by a learned single Judge in Special Civil Application No.7547 of 1992. That Special Civil Application was disposed of by the learned single Judge along with 11 other Special Civil Applications by a common judgment dated 19th March, 1993. Common question that arose in those Special Civil Applications was whether the petitioners therein were qualified for being considered for the posts of Primary Teacher as per the Gujarat Panchayat Service (Recruitment of Primary

Teachers) Rules, 1970 (hereinafter referred to as "The Rules"). Learned Judge took the view that candidates, who put in applications for the posts of Primary Teacher pursuant to the Notification issued on 13.10.1992, should have completed the age of 18 as on 1.7.1992 and not as on 1.7.1993, as contended by them. Learned Judge, while taking this view, differed from the stand taken by this court in many earlier decisions, placing reliance on the decision of the Apex Court in A.P. Public Service Commissioner, Hyderabad and another v. B. Sarat Chandra and others, reported in (1990) 2 SCC 669. Hence, these Letters Patent Appeals and Special Civil Applications.

3. For a proper understanding of the issue in controversy, we shall refer to the basic ...

13.10.1992, an advertisement was published in newspapers, inviting applications from eligible candidates for selection to the posts of Primary Teacher. Applications pursuant to this Notification were to be filed within 15 days therefrom. The Notification specifically mentioned that applications are for recruitment of Primary Teachers 1992-'93. Application form issued by the District Education Committee, Mehsana is produced as Annexure 'C' to Special Civil Application No.7547 of 1992. It required applicant to mention age as on 1.7.1992. Along with that application form, Instructions in respect of filling the forms were also issued. Instruction 6 was that :-

"... For evidence of the birth date, the candidate shall send a copy of the S.S.C. certificate or school leaving certificate or a certificate of the principal of the school in respect of the date of birth. For this year, the age shall be as on 1.7.1992...."

Instruction 14 further stated that the candidate, who has not completed 18 years as on 1.7.1992 and who is more than 28 years of age as on 1.7.1992, shall not be given any chance. It also provided that Scheduled Caste and Scheduled Tribe candidates are entitled to relaxation in respect of the maximum age limit upto 5 years and in the case of widows and forsaken candidates, the maximum age limit is 40. Pursuant to the Notification, petitioners, three in number, in Special Civil Application No.7547 of 1992, put in their application forms. The dates of birth of these petitioners are : 22.8.1974, 26.9.1974 and 26.7.1974, respectively. Consequently, they had not

completed 18 years of age as on 1.7.1992. Their contention is that the Notification issued on 13.10.1992 could not have fixed the age with reference to an anterior date, viz., 1.7.1992, that the age is to be computed with reference to the 1st July of the year in which recruitment is made and that the recruitment in this case took place long after the expiry of 1992 and so, they must be treated as eligible for being considered for the post of Primary Teacher. This contention did not find favour with the learned single Judge.

4. Learned counsel representing the appellants and petitioners relied on decision rendered by learned single Judges of this Court in Special Civil Applications Nos. 3678 of 1988, 6394 of 1988, 7769 of 1988, 8335 of 1998 and 1777 of 1992 in support of their contention that 1.7.1993 is to be taken as the relevant date, with which the age of the applicant is to be assessed for deciding the issue of eligibility. In the first case, viz., Special Civil Application No.3678 of 1988, Notification was issued on 13.8.1987, inviting applications from eligible candidates. Petitioner therein had completed 17 years and 1 month as on 1.7.1987. Therefore, she was considered as ineligible, being underaged. Interview for selection of the candidates, who put in applications pursuant to Notification dated 13.8.1987, was being held after 26.7.1988. So, the petitioner contended that the year of recruitment being 1988, on the 1st of July, 1988, she completed the age of 18 and so, is eligible for being considered for the post. Court took the view that there was no reason for the respondents not to permit the petitioner to appear in the interview since the petitioner completed 18 years on 1.7.1988, the year in which the recruitment is made.

5. In Special Civil Application No.6394 of 1988, petitioners applied for the post pursuant to the advertisement dated 9.12.1987. They were not considered eligible since they had not completed 18 years of age on 1.7.1987. The Court took the view that since the recruitment process started after May, 1988, the recruitment year would be 1988. Consequently, it was held that relevant date is 1.7.1988 and not 1.7.1987. The same view was followed by the same Judge in Special Civil Applications Nos. 7769 of 1988 and 8335 of 1988. Relying on this decision, another learned single Judge decided Special Civil Application No.1777 of 1992. Correctness of this decision was canvassed before learned single Judge, who passed the impugned judgment. Learned Judge refused to follow above decisions in the light of the view taken by the Apex Court in (1990) 2 SCC 669

(supra).

6. Before going into the question in controversy, we think it proper to refer to the provisions of the Rules, governing the recruitment of Primary Teachers. Rule 2(vi) defines "school year" as "the period commencing from 1st June and ending on 31st May of the succeeding year." Rule 3 deals with preparation of estimates of vacancy by Administrative Officer. As per this, the Administrative Officer should prepare an estimate of vacancies likely to arise in the District for each school year during the first week of April of the year. He shall then take steps to invite applications from qualified candidates by giving public notice. This means that in the month of April of a year, the Administrative Officer has to assess the probable...

arise in the post of Primary Teachers in the ensuing school year. For filling up those vacancies, he has to invite applications. If in April, 1992, as in this case, vacancies have been assessed, it will be in relation to the academic year 1992-'93. So, the school year, in relation to which the vacancy is to be filled up, is 1992-'93. 1992-'93 school year is from 1st June, 1992 to 31st May, 1993. Eligibility of one to apply for the vacancy that arose for 1992-'93 school year is contained in Rule 4 of the Rules. This Rule states that a candidate will be eligible for appointment if he is not less than 18 years of age and not more than 28 years of age. This has an Explanation added to it. It reads :-

"...Explanation:- For the purpose of this rule, a candidate shall be deemed to have attained the age limit, if he attains such age limit before the first July of the year in which the recruitment is made...."

7. As stated earlier, the vacancy that are to be filled up are those of the school year 1992-'93. That school year has July, 1992 within it. July 1993 is outside the school year. So, 1st July, 1992 is the relevant date with reference to which the eligibility is to be assessed. Pursuant to the Notification issued, if the interview and the preparation of the select list take place beyond July, 1993, the eligibility cannot be ascertained with reference to July of the subsequent year.

8. As per the Explanation to Rule 4, quoted above, the age limit should be with reference to 1st July of the

year in which recruitment is made. According to learned counsel representing the appellants and the petitioners, recruitment can only be the final selection. If the final selection takes place in 1993 or 1994, the relevant date for assessing the eligibility should be 1st July, 1993 or 1994, as the case may be, even if the Notification was issued in 1992 in relation to the school year 1992-'93. This argument, we are afraid, cannot be accepted.

9. In A.P. Public Service Commission v. B. Sarat Chandra and others, (1990) 2 SCC 669, Their Lordships had to consider the scope of the words "first day of July of the year in which selection is made". Only point of difference between that case and the case on hand is that, instead of the word 'selection' used therein, word 'recruitment' is the one used in the Rules. In the case before the Supreme Court, a candidate must have completed 21 years of age on the first day of July of the year in which selection is made and must not have completed 26 years as on that date. The argument advanced before the Apex Court was that the selection can be said to have been made only when the list is prepared and so, the eligibility of the candidate as to the age has to be determined with reference to the year when the list is prepared. According to Their Lordships, the word 'selection' does not mean the final act of selecting candidates only. Process of selection consists of various steps, like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of the list of successful candidates for appointment. When such different steps in the process of selection are to be undergone, the minimum or maximum age for suitability of a candidate for appointment, according to Their Lordships, cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed, the candidates, who are eligible on the date of application, may find themselves eliminated on becoming over-aged or those ineligible, on account of their not having completed the age of 18, becoming eligible. Therefore, it can certainly be held that the eligibility of a candidate on account of age cannot be allowed to depend upon any fluctuating or uncertain date. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for the candidates to apply. The Apex Court categorically held that it would be unreasonable to construe the word 'selection' as meaning the factum of preparation of the final select list. This decision of

the Supreme Court applies on all fours to the facts on hand. Recruitment of a candidate depends on a long process. The ultimate result of all those processes will culminate in the recruitment of candidates. So, the eligibility, on the basis of age, cannot be made to depend on the final stage of recruitment. It must be certain. When applications for filling up the vacancies that exist during the school year 1992-'93 are invited, the age of the candidate must be reckoned with reference to the first day of July of that school year. If first day of July of the school year is 1st July, 1992, eligibility must be assessed with reference to that date. If process of recruitment happened to be delayed on account of administrative reasons or otherwise, the eligibility cannot vary in so far as the said Notification and the vacancy that arose for that school year are concerned.

10. On 9th January, 1982, an advertisement was published, inviting applications for appointment to the posts of Junior Engineer in the Service of Jammu & Kashmir State. The last date for submitting application was July 15, 1982. A pass in Engineering Degree examination (Civil) was the minimum academic qualification required for applying to the post. Certain candidates, who did not pass the examination on or before July 15, 1982, applied for the post. Though they were not qualified on the last date for receipt of the application, they were selected on the ground that they were qualified on the date of interview. Their appointments were challenged. The Supreme Court, i...

first instance, did not interfere with the said appointment. That decision was reviewed and a Bench of three Judges, in Ashok Kumar Sharma & Others v. Chander Shekhar & another, JT 1997 (4) S.C. 99, stated the law as :-

"... The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all...."

In the instant case, applications were invited by Notification dated 13.10.1992. Applications pursuant

thereto were to be filed within 15 days therefrom. In the application form and in the Instructions to the candidates, it was specifically mentioned that eligibility on account of age is to be decided with reference to 1.7.1992. The said prescription in the application form and Instructions was in conformity with the Rules. Consequently, it cannot be held that one, who has not completed the age of 18 on 1.7.1992, is entitled to be considered for the post since the interview took place in 1993 or later, by which time, he has completed the age of 18. In view of the decisions of the Supreme Court, referred to earlier, and in the light of the provisions contained in the Rule, we have no hesitation in holding that the eligibility of a candidate, regarding age for the post of Primary Teacher, is to be assessed with reference to the 1st July of the year, in which the Notification is issued, and not otherwise. Putting it in other words, for determining the age requirement, the relevant date that is to be reckoned is the 1st of July of the year in which the process of recruitment commences. Contrary view taken by this Court, in the various decisions referred to earlier, cannot be considered to be laying down the correct legal position.

11. By virtue of the interim orders, some of the candidates, who had not completed the age of 18 years on 1st of July of the year, in which the Notification was issued, happened to get selected. Those candidates cannot claim any equity to the post. Benefit they have obtained by virtue of the interim orders must be taken away. Those candidates have to be sent out of the post, for, they were not eligible to apply to the post pursuant to the Notification. Authorities are directed to remove them from Service forthwith.

12. Letters Patent Appeals, Special Civil Applications and Civil Application No.2858 of 1997 are disposed of as indicated above. However, we direct the parties to suffer their respective costs.

(apj)